

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MOSES PEREZ and DEE PEREZ,

Plaintiffs,

v.

K&B TRANSPORTATION, INC., and KIARA WHARTON,

Defendants.

Case No. 1:17-cv-02610

Honorable Judge Pallmeyer

FIRST AMENDED COMPLAINT AT LAW

NOW COME the Plaintiffs, MOSES PEREZ and DEE PEREZ, by and through their attorneys, COGAN & POWER, P.C., and complaining of Defendant, K&B TRANSPORTATION, INC. and Defendant, KIARA WHARTON and state as follows:

COUNT I - NEGLIGENCE v. KIARA WHARTON

1. On January 20, 2016, at approximately 5:30 a.m., Plaintiff, MOSES PEREZ, was driving his 2002 Ford Explorer eastbound on Interstate 294 near milepost 4.75, in the Township of Thornton, County of Cook, State of Illinois.

2. On January 20, 2016, at approximately 5:30 a.m., Defendant, KIARA WHARTON, was the driver of an 80,000-pound Mack Truck commercial vehicle in interstate commerce, and was traveling eastbound on Interstate 294 near milepost 4.75.

3. On January 20, 2016, Interstate 294 was dark, snowy, and icy.

4. On January 20, 2016, Plaintiff, MOSES PEREZ hit a patch of black ice, began to slip on the black ice and turn in a circle, and was violently struck from behind by the 80,000-pound commercial vehicle operated by Defendant, KIARA WHARTON.

5. At all times relevant, Defendant, KIARA WHARTON, as a commercial truck driver carrying a load for an interstate motor carrier, had a duty to exercise reasonable care under the circumstances to protect the safety of MOSES PEREZ and others on the roads on which the tractor-trailer operated.

6. Despite aforesaid duty, Defendant, KIARA WHARTON was negligent in one or more of the following respects:

- a. Carelessly and negligently departed Urbana, Illinois and failed to discontinue operation of her commercial motor vehicle when there were inclement, hazardous weather conditions of snow and ice in violation of FMCSR 392.14;
- b. Carelessly and negligently failed to pull off the road, after departing Urbana, Illinois when inclement, hazardous weather conditions of snow and ice made further driving hazardous in violation of FMCSR 392.14;
- c. Carelessly and negligently failed to discontinue use of her cell phone while operating her motor vehicle on January 20, 2016 in violation of FMCSR 392.82;
- d. Carelessly and negligently failed to exercise "extreme caution" as required by FMCSR 392.14 in the operation of a commercial motor vehicle when the hazardous conditions of snow and ice made driving unsafe;
- e. Proceeded at a speed which was greater than reasonable and proper with regard to traffic conditions and the use of the highway, or which endangered the safety of persons or property, in violation of 625 ILCS 5/11-601;
- f. Failed to decrease speed so as to avoid colliding with another vehicle in violation of 625 ILCS 5/11-601;
- g. Operated her commercial motor vehicle over the jurisdictional speed limit;
- h. Followed Plaintiff's vehicle more closely than was reasonable and prudent, in violation of 625 ILCS 5/11-710;
- i. Carelessly and negligently operated a commercial motor vehicle without keeping a proper lookout 12 to 15 seconds ahead;

j. Failed to keep sufficient spacing between the front of her tractor trailer and the rear of the vehicle operated by the Plaintiff; and

k. Falsified her driving logs in violation of 49 CFR 395.8.

7. As a proximate result of one or more of the aforesaid negligent acts and/or omissions of Defendant, KIARA WHARTON, the Plaintiff, MOSES PEREZ sustained serious injuries of a personal and pecuniary nature, and has suffered and will continue to suffer physical pain and suffering, emotional pain and suffering, loss of a normal life, and past and future medical expenses.

WHEREFORE, Plaintiff, MOSES PEREZ, prays for judgment against Defendant, KIARA WHARTON in such an amount to fairly compensate him for damages alleged herein, together with costs of this action, and for interest as allowed by law, and for such other relief as may be just in the premises.

COUNT II - WILFUL & WANTON v. KIARA WHARTON

NOW COMES the plaintiff, MOSES PEREZ, by and through his attorneys, COGAN & POWER, P.C., and complaining of the defendant, KIARA WHARTON, and states as follows:

1-6. Plaintiff incorporates by reference the allegations in Count I, Paragraphs 1-6 as though fully set forth herein Paragraphs 1-6 of Count II.

7. On January 20, 2016, defendant, KIARA WHARTON operated her commercial motor vehicle with wilful and wanton disregard for the safety of persons or property in violation of 625 ILCS 5/11-503 by:

a. Willfully and wantonly departed Urbana, Illinois and failed to discontinue operation of her commercial motor vehicle when there were inclement, hazardous weather conditions of snow and ice in violation of FMCSR 392.14;

- b. Willfully and wantonly failed to pull off the road, after departing Urbana, Illinois when inclement, hazardous weather conditions of snow and ice made further driving hazardous in violation of FMCSR 392.14;
- c. Willfully and wantonly failed to discontinue use of her cell phone while operating her motor vehicle on January 20, 2016 in violation of FMCSR 392.82;
- d. Willfully and wantonly failed to exercise “extreme caution” as required by FMCSR 392.14 in the operation of a commercial motor vehicle when the hazardous conditions of snow and ice made driving unsafe;
- e. Proceeded at a speed which was greater than reasonable and proper with regard to traffic conditions and the use of the highway, or which endangered the safety of persons or property, in violation of 625 ILCS 5/11-601;
- f. Failed to decrease speed so as to avoid colliding with another vehicle in violation of 625 ILCS 5/11-601;
- g. Operated her commercial motor vehicle over the jurisdictional speed limit;
- h. Willfully and wantonly followed Plaintiff’s vehicle more closely than was reasonable and prudent, in violation of 625 ILCS 5/11-710;
- i. Willfully and wantonly operated a commercial motor vehicle without keeping a proper lookout 12 to 15 seconds ahead;
- j. Failed to keep sufficient spacing between the front of her tractor trailer and the rear of the vehicle operated by the Plaintiff; and
- k. Falsified her driving logs in violation of 49 CFR 395.8.

8. As a proximate cause of defendant, KIARA WHARTON’s willful and wanton operation of her commercial motor vehicle, the plaintiff, MOSES PEREZ sustained serious injuries of a personal and pecuniary nature, and has suffered and will continue to suffer physical pain and suffering, emotional pain and suffering, loss of a normal life, and past and future medical expenses.

WHEREFORE, Plaintiff, MOSES PEREZ, prays for judgment against Defendant, KIARA WHARTON in such an amount that will punish and deter her wilful and wanton conduct, as well as for further relief as this Court may deem just, proper, and appropriate.

COUNT III - VICARIOUS LIABILITY v. K & B TRANSPORTATION, INC.

NOW COMES the plaintiff, MOSES PEREZ, by and through his attorneys, COGAN & POWER, P.C., and complaining of the defendant, K&B TRANSPORTATION, INC., and states as follows:

1-6. Plaintiff incorporates by reference the allegations of Count I, Paragraphs 1-6 as though fully set forth herein as Paragraphs 1-6 of Count III.

7. On January 20, 2016, K&B TRANSPORTATION, INC. was an interstate motor carrier that regularly conducts business in Illinois, providing perishable and refrigerated commodities to customers.

8. On January 20, 2016, KIARA WHARTON was an agent and employee of K&B TRANSPORTATION, INC.

9. On January 20, 2016, KIARA WHARTON was acting within the scope of her duty as an agent and employee of K&B TRANSPORTATION, INC.

10. At all times relevant herein, K&B TRANSPORTATION, INC., by and through its lawful agent and employee KIARA WHARTON, had a duty to exercise reasonable care in its operation of a commercial motor vehicle.

11. As a proximate result of one or more of the aforementioned negligent acts of omissions, Plaintiff, MOSES PEREZ sustained serious injuries of a personal and pecuniary nature, and has suffered and will continue to suffer physical pain and suffering, emotional pain and suffering, loss of a normal life, and past and future medical expenses.

WHEREFORE, Plaintiff, MOSES PEREZ, prays for judgment against Defendant, K&B TRANSPORTATION, INC. in such an amount to fairly compensate him for damages alleged herein, together with costs of this action, and for interest as allowed by law, and for such other relief as may be just in the premises.

COUNT IV - NEGLIGENT SAFETY CULTURE v. K & B TRANSPORTATION, INC.

NOW COMES the plaintiff, MOSES PEREZ, by and through his attorneys, COGAN & POWER, P.C., and complaining of the defendant, K&B TRANSPORTATION, INC., and states as follows:

1. On January 20, 2016, K&B TRANSPORTATION, INC. was an interstate motor carrier that regularly conducts business in Illinois, providing perishable and refrigerated commodities to customers.

2. At all times relevant herein, Defendant, K&B had a duty to provide, maintain, and establish a safety culture for its drivers such as KIARA WHARTON, and the members of the public such as MOSES PEREZ, consistent with the rules and regulations as prescribed by 49 CFR 395.3.

3. At all times relevant herein, Defendant, K&B had a duty to not, including but not limited to, require its employees to drive over their hours, require its employees to operate their motor vehicles in hazardous weather conditions, pressure its employees to meet unreasonable delivery deadlines despite hazardous conditions, penalizing its employees for failing to timely transport commodities to significant clients.

4. Despite aforesaid duties, Defendant, K & B was negligent in one or more of the following ways:

- a. Violated 49 CFR 390.13 aiding, abetting, encouraging or requiring WHARTON to violate the FMCSR;

- b. Violated 49 CFR 392.6 scheduling a run which required WHARTON to operate her vehicle at speeds greater than those prescribed by the jurisdiction;
- c. Violated 49 CFR 395.3 permitting and/or requiring WHARTON to drive a property-carrying vehicle beyond the maximum driving time; and
- d. Violated 49 CFR 392.14 permitting and/or requiring WHARTON to drive a commercial motor vehicle in hazardous conditions.

5. As a proximate result of one or more of the aforesaid negligent acts and/or omissions of Defendant K & B TRANSPORTATION, INC., Plaintiff, MOSES PEREZ, sustained serious injuries of a personal and pecuniary nature.

WHEREFORE, Plaintiff, MOSES PEREZ, prays for judgment against Defendant, K&B TRANSPORTATION, INC. in such an amount to fairly compensate him for damages alleged herein, together with costs of this action, and for interest as allowed by law, and for such other relief as may be just in the premises.

COUNT V - WILFUL & WANTON v. K&B TRANSPORTATION, INC

NOW COMES the plaintiff, MOSES PEREZ, by and through his attorneys, COGAN & POWER, P.C., and complaining of the defendant, K&B TRANSPORTATION, INC., and states as follows:

1. On January 20, 2016, K&B TRANSPORTATION, INC. was an interstate motor carrier that regularly conducts business in Illinois, providing perishable and refrigerated commodities to customers.
2. On and before January 20, 2016, K&B TRANSPORTATION, INC. ratified the careless, wilful actions of their Defendant driver, KIARA WHARTON.
3. At all times relevant herein, Defendant, K&B had a duty to provide, maintain, and establish a safety culture for its drivers such as KIARA WHARTON, and the members of the

public such as MOSES PEREZ, consistent with the rules and regulations as prescribed by 49 CFR 395.3.

4. At all times relevant herein, Defendant, K&B had a duty to not, including but not limited to, require its employees to drive over their hours, require its employees to operate their motor vehicles in hazardous weather conditions, pressure its employees to meet unreasonable delivery deadlines despite hazardous conditions, penalizing its employees for failing to timely transport commodities to significant clients.

5. Despite aforesaid duties, Defendant, K & B was negligent in one or more of the following ways:

- a. Violated 49 CFR 390.13 aiding, abetting, encouraging or requiring WHARTON to violate the FMCSR;
- b. Violated 49 CFR 392.6 scheduling a run which required WHARTON to operate her vehicle at speeds greater than those prescribed by the jurisdiction;
- c. Violated 49 CFR 395.3 permitting and/or requiring WHARTON to drive a property-carrying vehicle beyond the maximum driving time; and
- d. Violated 49 CFR 392.14 permitting and/or requiring WHARTON to drive a commercial motor vehicle in hazardous conditions.

6. As a proximate result of one or more of the aforesaid wilful and wanton acts and/or omissions of Defendant K & B TRANSPORTATION, INC., Plaintiff, MOSES PEREZ, sustained serious injuries of a personal and pecuniary nature, and has suffered and will continue to suffer physical pain and suffering, emotional pain and suffering, loss of a normal life, and past and future medical expenses.

WHEREFORE, Plaintiff, MOSES PEREZ, prays for judgment against Defendant, K&B TRANSPORTATION, INC. in such an amount that will punish and deter its wilful and wanton conduct, as well as for further relief as this Court may deem just, proper, and appropriate.

COUNT VI - LOSS OF CONSORTIUM v. KIARA WHARTON

NOW COMES the plaintiff, DEE PEREZ, by and through her attorneys, COGAN & POWER, P.C. and complaining of defendant, KIARA WHARTON, and states:

1-6. Plaintiff incorporates by reference the allegations of Count I, Paragraphs 1-6 as though fully set forth herein as Paragraphs 1-6 of Count VI.

7. At all times relevant herein and to the present day, DEE PEREZ was and is the lawfully wedded spouse of MOSES PEREZ.

8. As a proximate result of the foregoing wrongful acts and omissions of the Defendant, K & B, Plaintiff, DEE PEREZ has been deprived of the love, affection, companionship, and services of her husband MOSES PEREZ.

WHEREFORE, Plaintiff, DEE PEREZ, prays for judgment against Defendant, KIARA WHARTON in such an amount to fairly compensate her for damages alleged herein, together with costs of this action, and for interest as allowed by law, and for such other relief as may be just in the premises.

COUNT VII: LOSS OF CONSORTIUM v. K&B TRANSPORTATION, INC

NOW COMES the plaintiff, DEE PEREZ, by and through her attorneys, COGAN & POWER, P.C. and complaining of defendant, K&B TRANSPORTATION, INC, and states:

1-4. Plaintiff incorporates by reference the allegations of Count IV, Paragraphs 1-3 as though fully set forth herein as Paragraphs 1-3 of Count VII.

5. At all times relevant herein and to the present day, DEE PEREZ was and is the lawfully wedded spouse of MOSES PEREZ.

6. As a proximate result of the foregoing wrongful acts and omissions of the Defendant, K & B, Plaintiff, DEE PEREZ has been deprived of the love, affection, companionship, and services of her husband MOSES PEREZ.

WHEREFORE, Plaintiff, DEE PEREZ, prays for judgment against Defendant, K&B TRANSPORTATION, INC. in such an amount to fairly compensate her for damages alleged herein, together with costs of this action, and for interest as allowed by law, and for such other relief as may be just in the premises.

COUNT VIII - FAMILY MEDICAL EXPENSE ACT (750 ILCS 65/15) –
DEE PEREZ v. KIARA WHARTON

NOW COMES the plaintiff, DEE PEREZ, by and through her attorneys, COGAN & POWER, P.C. and complaining of defendant, KIARA WHARTON, and states:

1-6. Plaintiff incorporates by reference the allegations of Count I, Paragraphs 1-6 as though fully set forth herein as Paragraphs 1-6 of Count VI.

7. This Count is brought on behalf of DEE PEREZ, Individually, as the lawful spouse of MOSES PEREZ, pursuant to the Family Expense Act, 750 ILCS 65/15 for all medical expenses and other expenses that she, DEE PEREZ, has and will have to continue to incur on behalf of her husband, MOSES PEREZ, and that are recoverable under 750 ILCS 65/15.

WHEREFORE, the plaintiff, DEE PEREZ, demands judgment against defendant, KIARA WHARTON, in an amount in excess of the jurisdictional limit.

Respectfully submitted;

By:



Attorney for Plaintiff

John M. Power
Hadas M. Benhamou

Cogan & Power, P.C.
1 E. Wacker Drive – Suite 510
Chicago, IL 60601
312-477-2500
ARDC: 6322466
jpower@coganpower.com
hbenhamou@coganpower.com